
GUIDELINES TO MANAGING CONTRACTUAL RISK

**State of North Dakota
Office of Management & Budget
Risk Management Division & Procurement Office**

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ESTABLISHING CONTRACTUAL RISK MANAGEMENT GUIDELINES

These guidelines assist state employees who procure goods and services on behalf of the state of North Dakota. These guidelines should be used with the OMB Risk Management Manual, as well as any applicable procurement rules and guidelines. This document is a reference tool for drafting indemnification and insurance clauses that are required in all state contracts. The guidelines represent the best practices to protect the state's interests. However, they may need to be adjusted to fit the specific contract and the agency's risk profile. Consult with the Risk Management Division and/or the agency's assigned Assistant Attorney General before making any changes to the recommended contract language. Some of the legal and insurance terms used below may not be familiar to you. For your reference, a glossary is provided at the end of this document.

Every contract has risks that must be reviewed from the perspective of protecting the state's assets and interests. This document provides you with guidelines and tools to help you manage those risks when you contract on behalf of the state. An inherent part of contract management is to:

1. Evaluate the risks involved;
2. Decide whether to avoid, transfer, or accept the risks; and
3. Implement appropriate risk transfer and/or risk financing mechanisms.

Read the contract thoroughly and anticipate events or situations that could happen within the scope of work outlined. Ask yourself:

1. Who are all the parties involved?
2. What kind of work is being done?
3. What type of accidents or losses could occur?
4. What is the worst-case scenario in terms of financial loss and/or injury to persons or property?
5. Are the responsibilities for the risks appropriately placed with those in the best position to control them?
6. What is each party's ability to manage the risks and absorb the losses?
7. Is the contract legal and enforceable?

Within the contract, risk transfer is accomplished through a combination of indemnification, hold harmless, and waivers of subrogation clauses. Insurance is commonly required as a means of providing the financial support to back the indemnitor's obligation to hold the indemnitee harmless.

The state's goal is to establish contract guidelines for insurance coverage that can be consistently applied with few exceptions. To insure the continued success of the state's contract review program, once insurance requirements have been set, they must be communicated in all bid proposals prior to awarding the contract. The program will not be successful if the insurance is negotiated after the contractor has been selected. Note that a change in bidding requirements, such as changing the insurance requirements, could result in a protest of the award by the unsuccessful bidders.

RISK MANAGEMENT APPENDIX

Indemnification and Insurance Standards

INSTRUCTIONS TO PROCUREMENT OFFICERS

This appendix contains indemnification and insurance clauses for contracts for commodities and services. Instructions to procurement officers are shaded.

This document will be an appendix to the solicitation (i.e. Request for Quote, Informal Request for Proposal, Invitation for Bid, or Request for Proposal), and it will be incorporated into the purchase order or contract. **DELETE All Non-Applicable Clauses And Instructions Before Printing.**

Consider the potential risk associated with the contract being contemplated, and select the appropriate appendix.

- **Intermediate Indemnification with Additional Insured Endorsement** – requires the contractor to be responsible for its own liability and the joint liability of the contractor and the state. This is the most commonly used form of an indemnification clause. Use the intermediate indemnification clause, if there is the potential for the contractor's activities, over which the state would have no supervision or control, to create liability for the state. When an additional insured endorsement is required it may take up to 90 days until the insurance carrier provides it. Make sure that you verify receipt of the endorsement within 90 days.
- **Limited Indemnification with Certificate of Insurance** – should be used only in those instances where the contractor's activities will not create liability for the state. Obtain a certificate of insurance documenting required coverages are in place prior to executing the contract.
- **Inter-agency and routine political subdivision Indemnification (limited form) with Certificate of Insurance** – should be used in those instances when contracting with a North Dakota state agency or political subdivision (cities/counties). See the Risk Management Manual for contracts with political subdivisions addressing unique circumstances where no subcontractor is involved (inter-governmental form). Certificate of insurance should be obtained from political subdivision, but not necessary from a state agency.
- **Professional liability coverage** – is required when contracting with professionals for intellectual services such as physicians, dentists, attorneys, architects, engineers, accountants, insurance agents and brokers, appraisers, loss claims adjusters, tax consultants, risk investment brokers, and investment and divestiture consultants.

Consult your Assistant Attorney General or the Risk Management Division before making revisions to a clause. Contact the Office of Management and Budget, Risk Management Division at 701-328-7584 for assistance.

DELETE These Instructions In The Final Draft Of The Appendix.

RISK MANAGEMENT APPENDIX

Indemnification and Insurance Standards

RISK MANAGEMENT ANALYSIS MATRIX			
		Indemnification and Insurance	Indemnification and Insurance
Rating	Definition	Commodities	Services
High	Likely to cause severe injury/death, major property damage, significant disruption of business schedule, financial loss/increased cost, or degradation of performance.	Intermediate with Additional Insured Endorsement	Intermediate with Additional Insured Endorsement
MODERATE	Potential to cause injury/illness, property damage, some disruption of business schedule, financial loss/increased cost, or degradation of performance.	Limited with Certificate of Insurance	Intermediate with Additional Insured Endorsement
LOW	Presents a minimal threat to safety, health and well being of participants, has little potential to cause disruption of business schedule, financial loss/increased cost, or degradation of performance.	None Or Limited with Certificate of Insurance	Limited with Certificate of Insurance
LOW Inter-agency And Routine Political Subdivision	Presents a minimal threat to safety, health and well being of participants, has little potential to cause disruption of business schedule, financial loss/increased cost, or degradation of performance.	None Or Limited with Certificate of Insurance	Limited with Certificate of Insurance
		* Certificate Not Required for ND Agencies	* Certificate Not Required for ND Agencies
		See the Risk Management Manual for contracts with political subdivisions addressing unique circumstances where no subcontractor is involved (inter-governmental form)	

RISK MANAGEMENT APPENDIX

Indemnification and Insurance Standards

Intermediate Exposure with Additional Insured Endorsement – Goods and Services *(Endorsement To Policy Is Necessary)*

NOTE: CONSULT RISK MANAGEMENT OR YOUR ASSISTANT ATTORNEY GENERAL BEFORE MAKING REVISIONS TO THIS CLAUSE.

INTERMEDIATE INDEMNIFICATION REQUIRES THE CONTRACTOR TO BE RESPONSIBLE FOR ITS OWN LIABILITY AND THE JOINT LIABILITY OF THE CONTRACTOR AND THE STATE. THIS IS THE MOST COMMONLY USED FORM OF AN INDEMNIFICATION CLAUSE.

USE THE INTERMEDIATE INDEMNIFICATION CLAUSE IF THERE IS THE POTENTIAL FOR THE CONTRACTOR'S ACTIVITIES, OVER WHICH THE STATE WOULD HAVE NO SUPERVISION OR CONTROL, TO CREATE LIABILITY FOR THE STATE.

Indemnification

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of the contractor or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Insurance

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.

NOTE: OPTIONAL CLAUSE (4) EMPLOYER'S LIABILITY.

THIS COVERAGE IS RECOMMENDED FOR CONTRACTORS DOMICILED OUTSIDE THE STATE OF NORTH DAKOTA.

DELETE (4) IF CONTRACTING WITH A RESIDENT (NORTH DAKOTA) VENDOR.

RISK MANAGEMENT APPENDIX

Indemnification and Insurance Standards

OPTION: DELETE IF NOT USED

- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

NOTE: OPTIONAL CLAUSE (5) PROFESSIONAL ERRORS AND OMISSIONS.

THIS COVERAGE IS REQUIRED WHEN INTELLECTUAL ABILITY IS CONTRACTED FOR RATHER THAN STRICT PHYSICAL ACTIVITY.

IF THE PROFESSIONAL SERVICES INVOLVE A POLLUTION EXPOSURE, REQUEST POLLUTION LEGAL LIABILITY COVERAGE INCLUDING CONTRACTUAL LIABILITY AND COMPLETED OPERATIONS WITH MINIMUM LIMITS OF \$1,000,000 EACH OCCURRENCE AND IN THE AGGREGATE.

DELETE (5) IF NOT NEEDED.

OPTION: DELETE IF NOT USED

- 5) Professional errors and omissions, including a three year "tail coverage endorsement," with minimum liability limits of \$1,000,000 per occurrence and in the aggregate.

The insurance coverages listed above must meet the following additional requirements:

NOTE: OPTIONAL SENTENCE IN 1)

"THE AMOUNT OF ANY DEDUCTIBLE OR SELF-RETENTION IS SUBJECT TO APPROVAL BY THE STATE."

THIS SENTENCE IS NEEDED WHEN THERE IS A QUESTION ABOUT THE FINANCIAL WHEREWITHAL OF THE VENDOR TO SELF RETAIN THE EXPOSURE. THIS REQUIREMENT DOES NOT PERTAIN TO LARGE, FINANCIALLY VIABLE POTENTIAL VENDORS.

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.

OPTIONAL SENTENCE: DELETE IF NOT USED

The amount of any deductible or self-retention is subject to approval by the State.

- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies.

RISK MANAGEMENT APPENDIX

Indemnification and Insurance Standards

- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
 - a) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
 - b) a provision that the policy and endorsements may not be canceled or modified without thirty days' prior written notice to the undersigned State representative;
 - c) a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;
 - d) a provision that Contractor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the state and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
 - e) cross liability/severability of interest for all policies and endorsements;
- 6) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.

NOTE: SENTENCE 7)

**WHEN AN ADDITIONAL INSURED ENDORSEMENT IS
REQUIRED IT MAY TAKE UP TO 90 DAYS UNTIL THE
INSURANCE CARRIER PROVIDES IT. MAKE SURE THAT YOU
VERIFY RECEIPT OF THE ENDORSEMENT
WITHIN 90 DAYS.**

- 7) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 8) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

**** For "Construction Contracts"** – *contracts for construction, alteration, renovation, repair, or maintenance of a building, structure, highway, road, bridge, water line, railroad right of entry, sewer line, oil line, gas line, appurtenance, appliance or other improvement to real property, including any moving, demolition or excavation under such contract add the following insurance requirement:*

In addition to the above insurance requirements, Contractor may be required to purchase a project-specific insurance policy on behalf of State including but not limited to an Owner's Protective Liability insurance policy or a Project Management Protective Liability insurance policy with an occurrence limit of not less than \$1,000,000 and an aggregate of \$2,000,000. Said insurance shall be kept in force until the project is accepted by State.

RISK MANAGEMENT APPENDIX

Indemnification and Insurance Standards

Limited Exposure with Certificate of Insurance – Goods and Services

(Certificate Of Insurance Is Adequate Documentation)

NOTE: CONSULT RISK MANAGEMENT DIVISION OR LEGAL COUNSEL BEFORE MAKING REVISIONS TO THIS CLAUSE.

WHEN LIMITED EXPOSURE IS IDENTIFIED, EACH PARTY AGREES TO ASSUME LIABILITY AND EXPENSES (e.g. DEFENSE AND INVESTIGATION COST) FOR THEIR OWN ACTS. THIS IS ESSENTIALLY THE SAME AS THE LIABILITY THAT WOULD EXIST UNDER COMMON LAW, BUT IT IS SPECIFIED IN THE AGREEMENT.

LIMITED INDEMNIFICATION IS APPROPRIATE FOR CONTRACTS WITH VENDORS IN INSTANCES WHERE THE CONTRACTOR'S ACTIVITIES WOULD NOT CREATE LIABILITY FOR THE STATE.

Indemnification

The State and Contractor each agrees to assume its own liability for any claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

Insurance

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.

NOTE: OPTIONAL CLAUSE (4) EMPLOYER'S LIABILITY.

THIS COVERAGE IS RECOMMENDED FOR CONTRACTORS DOMICILED OUTSIDE THE STATE OF NORTH DAKOTA.

DELETE (4) IF CONTRACTING WITH A RESIDENT (NORTH DAKOTA) VENDOR.

OPTION: DELETE IF NOT USED

- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

NOTE: OPTIONAL CLAUSE (5) PROFESSIONAL ERRORS AND OMISSIONS.

THIS COVERAGE IS REQUIRED WHEN INTELLECTUAL ABILITY IS CONTRACTED FOR RATHER THAN STRICT PHYSICAL ACTIVITY.

RISK MANAGEMENT APPENDIX

Indemnification and Insurance Standards

IF THE PROFESSIONAL SERVICES INVOLVE A POLLUTION EXPOSURE, REQUEST POLLUTION LEGAL LIABILITY COVERAGE INCLUDING CONTRACTUAL LIABILITY AND COMPLETED OPERATIONS WITH MINIMUM LIMITS OF \$1,000,000 EACH OCCURRENCE AND IN THE AGGREGATE.

DELETE (5) IF NOT NEEDED.

OPTION: DELETE IF NOT USED

- 5) Professional errors and omissions, including a three year “tail coverage endorsement,” with minimum liability limits of \$1,000,000 per occurrence and in the aggregate.

The insurance coverages listed above must meet the following additional requirements:

NOTE: OPTIONAL SENTENCE IN 1)

“THE AMOUNT OF ANY DEDUCTIBLE OR SELF-RETENTION IS SUBJECT TO APPROVAL BY THE STATE.”

THIS SENTENCE IS NEEDED WHEN THERE IS A QUESTION ABOUT THE FINANCIAL WHEREWITHAL OF THE VENDOR TO SELF RETAIN THE EXPOSURE. THIS REQUIREMENT DOES NOT PERTAIN TO LARGE, FINANCIALLY VIABLE POTENTIAL VENDORS.

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.

OPTIONAL SENTENCE: DELETE IF NOT USED

The amount of any deductible or self-retention is subject to approval by the State.

- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated “A-” or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an “A-” rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The insurance required in this agreement, through a policy or endorsement, shall include:
- a) a “Waiver of Subrogation” waiving any right to recovery the insurance company may have against the State;
 - b) a provision that the policy and endorsements may not be canceled or modified without thirty days prior written notice to the undersigned State representative;
 - c) the Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable;
 - d) failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

Inter-Agency and Routine Political Subdivision Indemnification (Limited Form) with Certificate of Insurance – Goods and Services *(Certificate Of Insurance Is Adequate Documentation For Agreements With North Dakota Political Subdivisions, But Not Necessary With Agreements Between North Dakota State Agencies)*

NOTE: CONSULT RISK MANAGEMENT DIVISION OR LEGAL COUNSEL BEFORE MAKING REVISIONS TO THIS CLAUSE.

WHEN LIMITED EXPOSURE IS IDENTIFIED WHEN CONTRACTING WITH ANOTHER STATE AGENCY OR POLITICAL SUBDIVISION, EACH PARTY AGREES TO ASSUME LIABILITY AND EXPENSES (e.g. DEFENSE AND INVESTIGATION COST) FOR THEIR OWN ACTS. THIS IS ESSENTIALLY THE SAME AS THE LIABILITY THAT WOULD EXIST UNDER COMMON LAW, BUT IT IS SPECIFIED IN THE AGREEMENT.

SEE THE RISK MANAGEMENT MANUAL FOR CONTRACTS WITH POLITICAL SUBDIVISIONS ADDRESSING UNIQUE CIRCUMSTANCES WHERE NO SUBCONTRACTOR IS INVOLVED (INTER-GOVERNMENTAL FORM).

Indemnification

The State and Contractor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

Insurance

Inter-agency Service Agreements:

The State and Contractor each shall secure and keep in force during the term of this agreement, from an insurance company, government self-insurance pool or government self-retention fund authorized to do business in North Dakota, commercial general liability with minimum limits of liability of \$250,000 per person and \$1,000,000 per occurrence.

Routine Political Subdivision Service Agreements:

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.

NOTE: OPTIONAL CLAUSE (2) PROFESSIONAL ERRORS AND OMISSIONS

THIS COVERAGE IS REQUIRED WHEN INTELLECTUAL ABILITY IS CONTRACTED FOR RATHER THAN STRICT PHYSICAL ACTIVITY.

IF THE PROFESSIONAL SERVICES INVOLVE A POLLUTION EXPOSURE, REQUEST POLLUTION LEGAL LIABILITY COVERAGE INCLUDING CONTRACTUAL LIABILITY AND COMPLETED OPERATIONS WITH MINIMUM LIMITS OF \$1,000,000 EACH OCCURRENCE AND IN THE AGGREGATE.

DELETE (2) IF NOT NEEDED.

OPTION: DELETE IF NOT USED

- 2) Professional errors and omissions, including a three year "tail coverage endorsement," with minimum liability limits of \$500,000 per occurrence and \$1,000,000 in the aggregate.
- 3) Automobile liability, including Owned (if any, Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.
- 4) Workers compensation coverage meeting all statutory requirements.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible or self retention is subject to approval by the State.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The insurance required in this agreement, through a policy or endorsement, shall include:
 - a) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State; and
 - b) a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State representative.
- 4) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 5) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.

CERTIFICATES OF INSURANCE AND ENDORSEMENTS

Contractors are required to provide the state with a Certificate of Insurance and/or Endorsement documenting the required coverages are in place, prior to commencement of the contract. When an additional insured endorsement is required it may take up to 90 days until the insurance carrier will provide it. Make sure that you verify receipt of the endorsement within 90 days. Visit the OMB State Procurement Office website at www.state.nd.us/csd/spo under Solicitation Templates for a sample letter of instruction for the successful vendor.

Certificate of Insurance:

A completed Certificate of Insurance should contain the following information:

- Name and address of agent, phone number and fax number;
- Name of insurance company(ies) and policy number(s);
- Policy period;
- Name and street address of insured;
- Description of coverage(s);
- Name/Number of Project;
- Policy limits as provided in the contract;
- Special instructions or terms of coverage (for example: identification of project or operations with respect to certificate being issued);
- State and/or agency listed as the certificate holder; and
- Signature of the insurer's agent or representative and date.

Endorsement:

When the contract terms provide that the state must be named as an "additional insured," an endorsement is required. The only way that an entity other than the named insured (contractor) is protected under the terms of the contractor's insurance policy is by adding, by endorsement, an additional insured. Under these circumstances, the certificate of insurance should note the additional insured ("Special instruction or terms of coverage" should show the addition of the state and/or agency as additional insured and/or waivers of subrogation). In addition, an endorsement needs to be provided prior to commencement of the contract.

Isn't The Certificate Of Insurance Enough If It Names The State As An Additional Insured?

An agent issues a certificate of insurance and, unless the agent is authorized to bind an insurance company, is not a statement by the contractor's insurer that the coverage is in place. A certificate of insurance does not confer rights upon a certificate holder or alter, extend, or amend policy coverage. The only proof that an insurance company has knowledge of and agrees to accept the contractual obligation of the contractor is an endorsement. Without an endorsement documenting the required coverage is in place, a contractor may not have the financial resources to comply with the contract terms. The endorsement should conform to the insurance requirement portion of the contract detailing the endorsement's terms.

INSTRUCTIONS FOR THE APPARENT SUCCESSFUL VENDOR

**STATE OF NORTH DAKOTA
AGENCY OR INSTITUTION NAME
ADDRESS
CITY, STATE, ZIP
TELEPHONE AND FAX NUMBER**

DATE

The State of North Dakota through its **AGENCY NAME** (State) has announced its intent to award your company a contract pursuant to **TYPE OF SOLICITATION** [Request for Proposal (RFP) or Invitation for Bid (IFB)], **NUMBER AND TITLE**.

You are instructed not to begin work, purchase materials, or enter into subcontracts relating to the project until both your firm and State sign the contract.

The terms of the solicitation and proposed contract require your firm to furnish the following prior to execution of the contract:

SELECT ONE OF THE FOLLOWING:

- Certificate of Insurance with an Additional Insured Endorsement that meets the requirements of **INSERT SOLICITATION SECTION NUMBER** related to indemnification and insurance requirements.

OR

- Certificate of insurance that meets the provisions of the **INSERT SOLICITATION SECTION NUMBER** related to indemnification and insurance requirements.

LIST OTHER REQUIREMENTS, AS NECESSARY:

- A performance bond that meets the provisions of **INSERT SECTION NUMBER** of the solicitation.

If you have any questions, please feel free to contact me at (701) **PHONE NUMBER**.

Sincerely,

NAME

Procurement Officer

Enclosure

SAMPLE LETTER WHEN CERTIFICATE IS INADEQUATE

Date:

To:

To Whom It May Concern:

Thank you for forwarding the Certificate of Insurance. After review, the certificate does not reflect required limits and/or coverages as outlined in the contract dated _____. Please amend the certificate form to reflect the following:

[INSERT THE INSURANCE PROVISIONS FROM CONTRACT]

Please forward the amended Certificate by (10 days) . If you have any questions, please call me at _____.

Sincerely,

**SAMPLE LETTER FOR
EXPIRATION OF CERTIFICATE OF INSURANCE**

Date:

To:

To Whom It May Concern:

Our records indicate that your Certificate of Insurance currently on file with us has either expired or will be expiring. Please have your insurance agent send us a new Certificate of Insurance evidencing the following:

[INSERT THE INSURANCE PROVISIONS FROM CONTRACT]

[Delete if not using Intermediate and Additional Insured Endorsement]

Further, ensure that the State of North Dakota, **Agency Name** is named as an additional insured and provide an Endorsement to the policy within 30-60 days documenting that the required coverage is in place.

If you have any questions, please call me at _____.

Sincerely,

SAMPLE -- CERTIFICATE OF INSURANCE					DATE (MM/DD/YY)	
PRODUCER AGENT NAME ADDRESS CITY STATE ZIP			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
INSURED CONTRACTOR NAME ADDRESS CITY STATE ZIP			COMPANIES AFFORDING COVERAGE			
			Company A			
			Company B			
			Company C			
			Company D			
Company E						
COVERAGES THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIODS INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS						
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	(If part of this policy)			General Aggregate	\$1,000,000
	<input checked="" type="checkbox"/> Commercial General Liability				Products-Comp/OP Agg	\$1,000,000
	<input type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occur				Personal & Adv Injury	\$1,000,000
	<input type="checkbox"/> Owner's & Contractor's Prot				Each Occurrence	\$1,000,000
	<input checked="" type="checkbox"/> Contractual Liability				Fire Damage (Any one fire)	XXXX
	<input checked="" type="checkbox"/> Stop Gap Employers Liability				Med Exp (Any one person)	XXXX
	B				AUTOMOBILE LIABILITY	(If part of this policy)
<input checked="" type="checkbox"/> Any Auto		OR				
<input type="checkbox"/> All Owned Autos		Bodily Injury and Property Damage				
<input type="checkbox"/> Scheduled Autos		Per Person	\$1,000,000			
<input type="checkbox"/> Hired Autos		Per Accident	\$1,000,000			
<input type="checkbox"/> Non-Owned Autos		Each Occurrence				
<input type="checkbox"/> Umbrella Form		Aggregate				
C	EXCESS LIABILITY	(If part of this policy)			<input type="checkbox"/> Other than Umbrella Form	
	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY				<input checked="" type="checkbox"/> Statutory Limits	
					Each Accident	\$1,000,000
					Disease - Policy Limit	\$1,000,000
					Disease - Each Employee	\$1,000,000
D	PROFESSIONAL ERRORS AND OMISSIONS	(If part of this policy)			Each Claim	\$1,000,000
	3 Year Tail <input checked="" type="checkbox"/>				Annual Aggregate	\$1,000,000
DESCRIPTION OF OPERATIONS/LOCATIONS/SPECIAL ITEMS 1. Description of Project 2. The following provisions shall be endorsed onto the Contractor's General Liability Policy. (Attach a copy of each endorsement) <ul style="list-style-type: none"> State of North Dakota and its agencies, officers and employees (State) are as Additional Insured Waiver of Subrogation against the State Any attorney who represents the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. 54-12-08) Contractor's insurance is primary for the State Cross Liability / Severability of Interest provision 						
CERTIFICATE HOLDER				CANCELLATION		
STATE OF NORTH DAKOTA AGENCY ADDRESS CITY STATE ZIP				SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.		
				AUTHORIZED REPRESENTATIVE		

SAMPLE

ENDORSEMENT TO GENERAL LIABILITY COVERAGE

IT IS HEREBY UNDERSTOOD AND AGREED THAT THE POLICY IS AMENDED AS FOLLOWS:

1. State of North Dakota and its agencies, officers and employees (State) are named as Additional Insured.
2. The Insurer waives all rights of subrogation against the State.
3. Any attorney who represents the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. 54-12-08).
4. This insurance policy shall be primary as respects any insurance, self-insurance or self-retention maintained by the State and any insurance, self-insurance or self-retention maintained by the State shall be in excess of this policy and shall not contribute with it.
5. Cross Liability / Severability of Interest.

Insured _____

Policy # _____ issued by _____
Insurance Company

Effective date _____

DEFINITIONS OF COMMON INSURANCE TERMS

(More Definitions Located In the Glossary of the Risk Management Manual)

A

Additional Insured—A person or entity other than the named insured who is protected by the policy, often in regard to a specific interest. This coverage is typically extended through a policy endorsement. Contrast with “Named Insured.”

Adjuster—A person who settles claims for insurers.

Aggregate— Cumulative. An aggregate limit of \$1 million means that when the total of all claims in a year reaches \$1 million, coverage ceases.

All States Endorsement—Automatically extends statutory workers compensation coverage to states where the contractor’s new operations are added during the policy term.

B

Bodily Injury—Injury, sickness, or disease sustained by a person, including death resulting therefrom. See also Personal Injury.

Bond—An obligation of the insurance company to protect one against financial loss caused by the acts of another.

Breach—Failure to live up to the warranties or condition of an insurance contract. For example, a fire sprinkler warranty is breached if the sprinklers are not operational, if the failure is from conditions under the insured’s control.

C

Cancellation—The termination of an insurance policy or bond before it’s expiration by the insured or insurer.

Carrier—An insurance company.

Certificate of Insurance—A form used to convey information (valid only as of the date it is issued) regarding the client’s insurance coverages. It does not confer rights upon a certificate holder or alter, extend, or amend policy coverage.

CGL—Commercial General Liability Coverage—Principal form of liability insurance for businesses that provides coverage for bodily injury and property damage, personal and advertising injury, contractual, products and completed operations on an occurrence basis.

Claim--The amount of damage for which a third party seeks reimbursement from the insured and/or insured seeks reimbursement from his or her insurance company. Once the amount

has been determined, it becomes a loss. Claim and loss are often used interchangeably. Self-insured losses are often called claims.

Contractual Liability—Coverage for liability assumed under contract.

Coverage—A term used to designate the type of protection provided by an insurance policy.

D

Deductible—An amount of loss to be absorbed by the insured before an insurer becomes liable for payment.

E

Effective Date—The date on which an insurance policy goes into effect starting date.

Employer's Liability--Liability insurance for employers to protect against bodily injury claims resulting from accident or disease of employees not covered by workers compensation. Examples: Employee rejects or is excluded from workers compensation; injuries not covered by workers compensation; suit by spouse; injuries in federal jurisdiction or monopolistic states.

Endorsement—An amendment to an insurance policy that in some way modifies the original contract provisions.

Errors and Omissions-- Commonly referenced as E&O, or professional liability. Applies when requested services require special intellectual ability rather than strict physical activity. Examples: Engineers, accountants, consultants, technology designers/installers, public officials, directors and officers. Medical personnel E&O is often called malpractice coverage.

Exclusions--Specific items identified as not being covered under a particular policy.

F

Follows Form—A requirement that an excess policy to be written with the same terms and conditions as the policy to which it is excess.

H

Hold Harmless Agreement—A clause found in contracts and leases that shifts (or attempts to shift) liability for loss from one party to another.

I

Indemnify/Indemnity—Making “whole” or restoring financially, after a loss.

Indemnity Agreement—Same as a hold harmless agreement.

Insured—The person who has purchased an insurance policy and is protected by it; sometimes also referred to as the “assured.”

Insurer—The insurance company.

L

Lessee—A tenant who has signed a lease.

Liability Insurance—Any form of coverage whereby the insured is protected against claims of other parties arising from specified causes.

Limit—The maximum amount the insured can collect under the terms of a policy.

Loss—Any destruction or disappearance of value.

N

Named Insured—Any person, firm or corporation, or any member thereof, specifically designated by name as insured(s) in a policy as distinguished from the others who, though unnamed, are protected under some circumstances. A common application of this latter principle is in auto liability policies wherein by a definition of “insured,” coverage is extended to other drivers using the car with the named insured’s permission. Other parties can also be afforded protection of an insurance policy through being named an Additional Insured (see definition) through a policy endorsement. Other rights and responsibilities of the Named Insured include: rights to request policy endorsements or additional coverage, terminate policy, receive premium refund; obligations to notify insurer of a claim, pay premiums, and to comply with all other policyholder obligations.

Negligence—Failure to exercise that degree of care that a reasonable person would exercise under the same circumstance.

P

Property Insurance—Insurance that indemnifies an individual or entity with an ownership interest in real or personal property for loss of or damage to property or the loss of business income-producing ability.

R

Reinsurance—A contract to transfer all or a portion of the insurer’s (ceding insurance company’s) risk, assumed on behalf of its insureds, to another insurer/reinsurer. The reinsurer agrees to reimburse the insurer/ceding insurance company for the claim’s

reinsured portion. A reinsurer may, in turn, seek reinsurance on some portion of the risk it has reinsured, a process known as “retrocession.”

Risk—The chance or probability of financial loss.

S

Self-insurance—Retention of risk. Generally refers to a planned program for financing or otherwise recognizing losses. It is not the same as insurance.

Stop Gap--Specific form developed to provide employer’s liability coverage for the employer’s activities in monopolistic workers compensation states when the employer is domiciled in a different state.

Subrogation--The right of an insurer to recover from a third party an amount paid on a loss when the third party is at fault.

T

Tail Coverage--Provides for a specific time period after the policy expiration during which the insured can file a claim that occurred but was not reported during the claims-made policy term.

Term--The length of time for which a policy or bond is written.

Third Party--Someone other than the parties directly involved in an action or transaction; someone other than the insured and the insurer.

U

Umbrella or Excess Policy—A broad, high-limit liability policy usually requiring the insured to carry primary or underlying insurance.

W

Waiver—The relinquishment of a known right; for example waiver or subrogation under a fire insurance policy.

Waiver of Subrogation—A waiver by the named insured giving up any right of recovery against a third party. For example, in a construction contract, if a contractor provides a waiver of subrogation on a workers’ compensation policy, the contractor (or its insurer) would not be able to file a claim against a third party for recovery for injury to an employee occurring on its premises where the construction is taking place. Normally an insurance policy requires that subrogation (recovery) rights be preserved. In commercial property insurance, a written waiver of subrogation rights is permitted if it is executed before the loss occurs.